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2026 VT 51

No. 26-AP-160

In re C.L., Juvenile

Supreme Court

On Appeal from
Superior Court, Washington Unit,
Family Division

September Term, 2026

Kirstin Schoonover, J.

Rachael G. Chahoud of SouthLaw, PLLC, Sharon, for Appellant.

Michelle Donnelly, Washington County State's Attorney, and Kristin Gozzi, Senior Deputy State's Attorney, Barre, for Appellee.

PRESENT: Reiber, C.J., Eaton, Waples, Nolan and Drescher, JJ.

¶ 1. **DRESCHER, J.** The family division granted the State's request for a nontestimonial identification order (NTO) under Vermont Rule of Criminal Procedure 41.1 to obtain DNA evidence from juvenile C.L., who was subject to delinquency proceedings. In this interlocutory appeal, C.L. argues the family division erred in denying his motion to quash the NTO because the State's request failed to establish the commission of an "offense" within the meaning of Rule 41.1. We conclude that the State's request satisfied the requirements of Rule 41.1 and therefore affirm.

I. Background

¶ 2. In November 2025, the Washington County State's Attorney brought a delinquency petition against C.L. under 33 V.S.A. § 5201(a) alleging C.L. had committed aggravated sexual assault in violation of 13 V.S.A. § 3253(a)(1). The charging affidavit alleged that in early October 2025 the victim reported to her mother that C.L. sexually assaulted her, though the victim thought she may have been drugged because she did not remember many details. During a subsequent forensic interview, the victim recalled that when she and C.L. were alone in the woods, and after the victim refused C.L.'s request to have sex, C.L. hit her, grabbed her hair, pulled her down, ripped her clothing off, and penetrated her with his penis, causing the victim severe pain. The victim also reported that C.L. strangled her, causing her to pass out. C.L was twelve years old at the time of the incident.

¶ 3. After C.L. denied the allegations and was released on conditions, the Vermont State Police applied for an NTO requiring C.L. to provide a cheek swab for the collection of DNA. The affidavit accompanying the application repeated most of the allegations in the delinquency petition and added that the Vermont Forensic Laboratory had observed "blood-like" stains and seminal fluids on clothing worn by the victim during the incident.

¶ 4. When the family division issued the requested order, C.L. filed an emergency motion to quash. C.L. contended that Rule 41.1, which governs the issuance of NTOs, did not authorize the order because, in C.L.'s view, he could not be charged with an "offense" as defined by the rule because adjudication as a delinquent child would neither constitute a criminal conviction nor result in imprisonment. See 33 V.S.A. § 5202(a)(1)(A) (providing that adjudication of delinquency not deemed conviction of crime); id. § 5232(a) (providing disposition options in delinquency proceedings and not including imprisonment).

¶ 5. The family division denied the motion to quash. The court reasoned that Rule 41.1's definition of offense focused on whether the enumerated crime was "triable" in court and

"punishable" by more than a year in prison; not whether the person named in the NTO would actually be tried and imprisoned. The court also noted that Rule 41.1 specifically stated that its procedures apply to "persons who are or may be charged with being a delinquent child, whether the child ultimately is charged as a juvenile or as an adult." V.R.Cr.P. 41.1(n). The court further reasoned that because C.L.'s case could be transferred to the criminal division under 33 V.S.A. § 5204(a), he was subject to potential trial and imprisonment. The court observed that if NTOs were not permitted in delinquency proceedings, the State may prefer to charge children in the criminal division, especially in cases where DNA evidence may be particularly important, contrary to the rehabilitative purposes of juvenile proceedings.

¶ 6. C.L. timely moved for permission to take an interlocutory appeal under Vermont Rule of Appellate Procedure 5(b)(1), and the family division granted the request.

II. Analysis

¶ 7. This appeal concerns the interpretation of Criminal Rule 41.1. "The interpretation of a procedural rule is . . . a question of law which we review de novo." State v. Gurung, 2020 VT 108, ¶ 23, 214 Vt. 17, 251 A.3d 572. When interpreting a rule of procedure, "we employ tools similar to those we use in statutory construction," and "consider its plain language and the purpose it was designed to serve." State v. Amidon, 2008 VT 122, ¶ 16, 185 Vt. 1, 967 A.2d 1126. We also "avoid interpretations that would lead to an unjust, unreasonable and absurd consequence." In re VT Real Estate Holdings 1, LLC, 2026 VT 13, ¶ 9, __ Vt. __, 356 A.3d 1159 (quotation omitted).

¶ 8. Like his argument in the family division, the crux of C.L.'s argument on appeal is that an NTO cannot issue against him because, due to his pending delinquency proceeding, he cannot be charged with an "offense" as defined in the rule. He also argues that permitting NTOs in delinquency proceedings is inconsistent with their rehabilitative purposes, as well as the larger statutory scheme governing juvenile cases. We reject these arguments based on Rule 41.1's plain

language and the purpose it was designed to serve. See In re Granger, 2024 VT 79, ¶ 8, 220 Vt. 330, 328 A.3d 1213 (explaining that tools of statutory construction apply to interpretation of court rules).

¶ 9. We start with the plain language. Gurung, 2020 VT 108, ¶ 23. Rule 41.1(n), entitled "Minors," states its procedures apply to "all persons" like C.L. "who are or may be charged with being a delinquent child, whether the child ultimately is charged as a juvenile or as an adult." Thus, the rule specifically contemplates its application to juveniles subject to delinquency proceedings. It also contains no requirement that juveniles be charged with an offense before an NTO may issue.

¶ 10. There is nothing else in the rule, including the definition of "offense," that suggests otherwise. Rule 41.1 directs a judicial officer to issue an NTO upon a request which establishes by affidavit: (1) "probable cause to believe an offense has been committed"; (2) "reasonable grounds to suspect, or . . . probable cause to believe, that the person named or described in the affidavit committed the offense"; and (3) the results of the requested "nontestimonial identification procedures will be of material aid in determining whether the person named in the affidavit committed the offense." V.R.Cr.P. 41.1(c)(1)-(3). The rule defines offense to mean "an offense which is triable in any court and which is punishable by imprisonment for more than one year." V.R.Cr.P. 41.1(m)(1).

¶ 11. The definition requires the "offense"—not the offender—be triable and punishable. As the family division accurately noted, the rule does not require that the individual named in the affidavit be at risk of imprisonment for more than one year. C.L. does not argue that aggravated sexual assault is not an offense under this definition. Nor does he argue the affidavit fails to show sufficiently he violated 13 V.S.A. § 3253. That C.L. may be unlikely to face a trial in the criminal division or be subject to a potential prison sentence has no bearing on whether the conduct alleged in the affidavit constitutes an offense.

¶ 12. Further, "[a] fundamental principle" in construing the Court's rules "assumes that the drafters intended no redundancy." In re PRB Docket No. 2007-046, 2009 VT 115, ¶ 14, 187 Vt. 35, 989 A.2d 523. Rule 1(a)(1) of the Vermont Rules for Family Proceedings provides that Rule 41.1 "shall apply to all delinquency proceedings."[1] Construing Rule 41.1 not to authorize an NTO in the case of a child subject to delinquency proceedings would render both Family Rule 1 and Criminal Rule 41.1(n) superfluous, in violation of this fundamental principle of interpretation.[2]

¶ 13. Finally, C.L.'s observation that a "delinquency proceeding is not a criminal prosecution," In re S.D., 2022 VT 44, ¶ 16, 217 Vt. 180, 287 A.3d 547, does not lead to a contrary result. By statute, delinquency proceedings are intended to shield children who have committed delinquent acts from "the taint of criminality and the consequences of criminal behavior." 33 V.S.A. § 5101(a)(2). We agree with the family division that if NTOs were not available in delinquency proceedings, more children would likely be charged in the criminal division, especially in cases where DNA evidence is critical. This would be contrary to the statute's explicit purpose.

[1] Rule 1(a)(1) for Family Proceedings provides, "[t]he Rules of Criminal Procedure shall apply to all delinquency proceedings commenced pursuant to Chapters 51 and 52 of Title 33 of the Vermont Statutes Annotated or transferred from other courts pursuant to 33 V.S.A. § 5203 except as otherwise provided by this rule." Family Rule 1(a)(2) lists the criminal rules that do not apply in delinquency proceedings; Criminal Rule 41.1 is not among them.

[2] Our conclusion is consistent with, but does not depend on, recently promulgated amendments to Rule 41.1, effective January 1, 2027. Order Promulgating Amendments (October 6, 2026) (unpub. mem.), https://www.vtcourts.gov/sites/default/files/documents/PROMULGATED-RulesofAdmission9%28b%29and13--STAMPED.pdf. These amendments narrow the definition of "offense" in the case of a person under the age of 19 to include "offenses brought in the Criminal Division punishable by imprisonment for more than two years and offenses brought in the Family Division which, if brought in the Criminal Division, would be punishable by imprisonment for more than two years." Subdivision (n) is also amended to clarify the procedures for NTOs pertaining to a person under 19 who "is or may be subject to delinquency proceedings whether the child is subject to juvenile proceedings or is charged with an offense in the Criminal Division of the Superior Court."

¶ 14. The governing statutes also direct that children committing delinquent acts be provided with "supervision, care, and rehabilitation that ensure: (A) balanced attention to the protection of the community; (B) accountability to victims and the community for offenses; and (C) the development of competencies to enable children to become responsible and productive members of the community." 33 V.S.A. § 5101(a)(2); see also § 5232(a)(1)-(4) (explaining that disposition for child found to be delinquent shall provide for, in addition to child's supervision, care and rehabilitation: protection of community, accountability to victims, and development of competencies to assist child). Accomplishing these objectives starts with an understanding of the delinquent acts committed. NTOs in delinquency proceedings help achieve that understanding because they must "be of material aid in determining whether [the child] committed the offense." V.R.Cr.P. 41.1(c)(3); see also State v. Towne, 158 Vt. 607, 620, 615 A.2d 484, 491 (1992) ("The only issue under Rule 41.1(c)(3) is whether defendant's link to the crime—already established under the first two parts of the rule—will be strengthened or weakened by" DNA material sought in NTO.). Rule 41.1's plain meaning is therefore consistent with the legislative scheme.

Affirmed.

FOR THE COURT:

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Associate Justice